

Vendor Protest Procedure

Version 1.0 - 20 SEP 2011

Texas Department of Information Resources

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1. Introduction

Purpose

The purpose of the Vendor Protest Standard Operating Procedure (SOP) is to provide step-by-step instructions for formal protest during solicitation, evaluation, or award of a contract by the Texas Department of Information Resources (DIR). This Vendor Protest SOP should be read in conjunction with 1 Texas Administrative Code (TAC) Chapter 201, *General Administration*, §201.1 (a). This DIR rule and this Vendor Protest SOP are formulated to comply with Texas Government Code (TGC) Chapter 2155, *Purchasing: General Rules and Procedures*, §2155.076.

Any protesting party — actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract — may formally protest to the DIR Director of the Enterprise Contracts Division. Formal protests must conform to the requirements of this Vendor Protest SOP. The Vendor Protest SOP addresses requirements for protest:

- specifications
- submission
- determination
- appeal
- referral
- documentation management

Associated References

SOURCE DOCUMENTS AND RESOURCES

The following sources were used in formulating this SOP.

Source Reference	Level	Description/Relevance	Location
1 TAC Chapter 201, §201.1 (a)	State	Establishes procedures for vendor protest within DIR.	TAC website: http://info.sos.state.tx.us
TGC Chapter 2155, §2155.076	State	Requires each state agency by rule to develop and adopt protest procedures for resolving vendor protests relating to purchasing issues.	Texas statutes website: www.statutes.legis.state.tx.us

SUPPORTED DOCUMENTS RESOURCES

The following sources may be affected by changes to this SOP.

Supported Reference	Level	Description/Relevance	Location
1 TAC Chapter 201, §201.1 (a)	State	Establishes procedures for vendor protest.	TAC website: http://info.sos.state.tx.us

2. Procedure

General Narrative

OVERVIEW

The Vendor Protest SOP provides instructions to specify, submit, determine, appeal, refer, and document formal protests. Additional operational activities, such as tracking and review of vendor protests, routinely occur and are outside the scope of this SOP.

DESCRIPTION

Specify

A formal protest must be in writing, sworn, and contain:

(A) a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;

(B) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in subparagraph (A) of this paragraph;

(C) a precise statement of the relevant facts;

(D) an identification of the issue(s) to be resolved;

(E) argument and authorities in support of the protest; and

(F) proof that copies of the protest have been mailed or delivered to all respondents who have submitted bids, proposals or offers for the contract involved. A certification that copies were supplied to all interested parties with a list of the addresses the protest was sent to will be accepted as proof of delivery of copies.

Submit

A formal protest must be received in the Enterprise Contracts Division within 10 working days after the protesting party knows, or should have known, of the occurrence of the action which is protested. Copies of the protest must be mailed or delivered by the protesting party to DIR and all respondents who have submitted bids, proposals or offers for the contract involved. Names and addresses of such respondents may be obtained by sending a written request for the information to the purchasing office within DIR.

Determine

In the event of a timely protest as described in the Submit subsection, and an award has not been made, DIR will not proceed further with the solicitation or award of the contract unless the Executive Director, after consultation with the Director of Enterprise Contracts Division makes a written determination that the award of contract without delay is necessary to protect substantial interests of the state.

The Director of the Enterprise Contracts Division has the authority, prior to appeal to the Executive Director, or his or her designee, to settle and resolve the protest concerning the solicitation or award of a contract.

The Director of the Enterprise Contracts Division may consult with legal counsel concerning the protest.

The Director of the Enterprise Contracts Division may solicit written responses to the protest from respondents who have submitted bids, proposals or offers for the contract involved and from other interested parties. Upon written request, the protesting party will be given notice of the request and any written responses received.

If the protest is not resolved by mutual agreement, the Director of the Enterprise Contracts Division will issue a written determination on the protest.

(A) If the Director of the Enterprise Contracts Division determines no violation of rules or statutes occurred, he or she will inform the protesting party and each respondent who submitted a bid, proposal or offer for the contract involved by letter. The letter will set forth the reasons for the determination.

(B) In instances in which the contract has not been awarded, if the Director of the Enterprise Contracts Division determines that a violation of the rules or statutes has occurred, he or she will inform the protesting party and each respondent who submitted a bid, proposal or offer for the contract involved by letter. The letter will set forth the reasons for the determination and the appropriate remedial action.

(C) In instances in which the contract has been awarded, if the Director of the Enterprise Contracts Division determines that a violation of the rules or statutes has occurred, he or she will inform the protesting party and each respondent who submitted a bid, proposal or offer for the contract by letter. The letter will set forth the reasons for the determination and may conclude that the contract awarded is void.

Appeal

The determination of the Director of the Enterprise Contracts Division on a protest may be appealed by the protesting party to the Executive Director or his or her designee. An appeal of the determination of the Director of the Enterprise Contracts Division must be written and received in the Executive Director's office no later than 10 working days after the date of the determination. The appeal will be limited to review of the determination. A copy of the appeal must be mailed or delivered by the appealing party to DIR and each respondent who submitted a bid, proposal or offer for the contract and must contain a certified statement that such copies have been provided. Failure of the protesting party to appeal the determination of the Director of the Enterprise Contracts Division, within 10 working days after the date of the determination renders the determination the final administrative action of DIR on the protest.

The Executive Director, or his or her designee, may confer with the Office of General Counsel in reviewing the matter appealed.

The Executive Director, or his or her designee, will review the appealed protest, any requests for and written responses to the appealed protest from any respondent who submitted a bid, proposal or offer for the contract or other interested parties, the determination and the appeal.

Refer

The Executive Director, or his or her designee, may refer the matter to the board for consideration at a regularly scheduled open meeting or issue a written decision on the appealed protest. If the matter is not referred to the board by the Executive Director, or his or her designee, the decision of the Executive Director, or his or her designee, is final.

When a protest appealed as described in the Appeal subsection has been referred to the board:

(A) Copies of the appealed protest will be mailed to the board.

(B) All interested parties who wish to make an oral presentation at the open meeting at which the board is scheduled to consider the protest will notify the Office of General Counsel at least 48 hours in advance of the open meeting.

(C) The board may consider oral presentations and written documents presented by staff and interested parties, including the protesting party and any respondent who submitted a bid, proposal or offer for the contract. The board chair will set the order and length of time allowed for presentations.

(D) Board determination of the appeal will be by duly adopted resolution reflected in the minutes of the open meeting, and will be final.

(E) Unless good cause for delay is shown or the board determines that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed timely will not be considered.

A decision issued by the board in open meeting, or in writing by the Executive Director, or his or her designee, or in writing by the Director of the Enterprise Contracts Division, that is not appealed in a timely manner, will be the final administrative action of the department.

Document

DIR will maintain all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the retention schedule of DIR.

Step-by-Step Instructions

The following table provides step-by-step instructions for operating under this SOP. Any numbered notes immediately follow the table in which they occur.

Role	Step	Action	Notes
Protesting Party	1	Specifies a formal protest in conformance with the requirements of this SOP and submits the formal protest to the Enterprise Contracts Division.	
Director of the Enterprise	2	Resolve protest by mutual agreement.	
	Yes	If resolved, no further action is required.	

Role	Step	Action	Notes
Contracts Division	No	Issue a written determination on the protest.	
Protesting Party	3	May appeal the written determination on the protest by the Director of the Enterprise Contracts Division to the Executive Director or his or her designee.	
	Yes	If appealed, wait for written decision from the Executive Director.	
	No	No further action is required.	
Executive Director	4	May refer the matter to the board for consideration at a regularly scheduled open meeting or issue a written decision on the protest.	
	Yes	If referred to the board, the board decision is final.	
	No	The written decision by the Executive Director is final.	
Protesting Party	5	No further action is required.	

3. Records Management

Records related to or produced by executing this Vendor Protest SOP are stored, maintained, and pending approval, disposed of according to the requirements of the DIR Records Retention Schedule and State Records Management laws.

4. Change Management

This Vendor Protest SOP is subject to change. All changes and review of this SOP shall follow the DIR Technology Management Handbook.

5. Revision History

Version	Date	Description
1.0	September 20, 2011	Released Vendor Protest SOP following adoption of 1 TAC 201 amendments, effective September 20, 2011.

6. Glossary

formal protest: written, sworn, and contain:

(A) a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;

(B) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in subparagraph (A) of this paragraph;

(C) a precise statement of the relevant facts;

(D) an identification of the issue(s) to be resolved;

(E) argument and authorities in support of the protest; and

(F) proof that copies of the protest have been mailed or delivered to all respondents who have submitted bids, proposals or offers for the contract involved. A certification that copies were supplied to all interested parties with a list of the addresses the protest was sent to will be accepted as proof of delivery of copies.

interested parties: all other actual or prospective bidders, offerors, or contractors who participated in the solicitation, evaluation, or award of a contract who are not the protesting party

protesting party: an actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract.